

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
09/24/03/ Item: 4.d.

File Number
PDC03-060

Application Type
Planned Development Rezoning

Council District
6

Planning Area
Willow Glen

Assessor's Parcel Number(s)
264-45-049

PROJECT DESCRIPTION

Completed by: Anastazia Aziz

Location: East side of Bird approximately 490 feet northeasterly of Snyder Avenue

Gross Acreage: 0.19

Net Acreage: 0.19

Net Density: 8 units per acre

Existing Zoning: R-1-8

Existing Use: Residential

Proposed Zoning: A(PD) Planned
Development

Proposed Use: To allow a 530 square-foot half-story living space with a bathroom
constructed in an accessory structure without benefit of permits.

GENERAL PLAN

Completed by: AA

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8 DU/AC)

Project Conformance:
☒ Yes ☐ No
[] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AA

North: Single-family residential

R-1-8 Residential

East: Single-family residential

R-1-8 Residential

South: Single-family residential

R-1-8 Residential

West: Single-family residential

R-1-8 Residential

ENVIRONMENTAL STATUS

Completed by: AA

☐ Environmental Impact Report found complete
☐ Reuse of Negative Declaration

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: AA

Annexation Title: Willow Glen

Date: 10/1/36

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Denial

Date:

Approved by: _____
☐ Action
☐ Recommendation

APPLICANT/DEVELOPER

OWNER

Stan Davis
1023 Bird Avenue
San José, CA 95125

PUBLIC AGENCY COMMENTS RECEIVED	Completed by: AA
<p>Department of Public Works</p> <p>See attached memorandum</p>	
<p>Other Departments and Agencies</p> <p>See attached Compliance Order dated March 29, 2001 and Appeals Hearing Board Resolution #03-054 dated January 23, 2003.</p>	
<p>General Correspondence</p> <p>See attached correspondence.</p>	
ANALYSIS AND RECOMMENDATIONS	

BACKGROUND

The applicant, Stan Davis, is requesting a Planned Development Rezoning to allow an accessory structure that contains a living space in the form of a 530 square foot second-floor, half-story with a bathroom. The existing zoning is R-1-8 Residence District which allows single-story accessory structures and does not permit living space, or more than two plumbing fixtures in accessory structures.

The property is 0.19 gross acres in area, which is characteristic of lot sizes in the neighborhood, and is generally flat and trapezoidal in shape. The project site is developed with a single-family residence used for residential purposes and a detached garage. The existing single-family residence was built in 1876 and is listed on the City's Historic Inventory as a *contributing structure*. The parcel is bounded by single-family residences with rear yard accessory structures to the north, east, south, and west.

The property has been the subject of numerous permits and Code Enforcement actions as described below.

Permit History Prior to Code Enforcement Action

Special Use Permit application File No. SP98-026 allowing modifications to a legal non-conforming historic residence and construction of a 912 square-foot accessory structure was submitted in April, 1998. Development Variance application File No. V98-017 allowing the accessory structure to exceed the maximum 16-foot height limit and File No. V98-018 allowing a front perimeter fence in excess of the 3-foot maximum height limit were submitted in July 1998. The applicant indicated a desire to increase the height of the accessory structure in order to match the roof pitch of the Eastlake Victorian historic residence existing on the site and indicated a second floor would not be incorporated in the design. On August 13, 1998, the Director of Planning approved SP98-026, V98-017 and V98-018 permitting modifications to the residence, a single-story accessory structure 18 feet in height and a front perimeter fence 6 feet in height.

Subsequent to the approval of the above development applications, the applicant applied for building permits and modified the design of the accessory structure to include a pull-down staircase which provided access to an attic storage area in the rafters of the structure. The building plan set did not include the construction of a floor. Planning staff approved the revised building plans in the context of a plan conformance review.

Code Enforcement History

On March 7, 2001 an advertisement placed on behalf of the applicant in the Willow Glen Resident advertised the subject property for sale and described the property as including a three-car garage with an au paire guesthouse on the second-floor, half story above the garage (see attached).

On March 22, 2001, Code Enforcement received a complaint that a room built over the garage of the subject property was being prepared for illegal occupancy by a tenant. No plumbing, electrical or building permits had been issued to allow the construction of the second floor half story in the accessory structure.

On March 29, 2001, Code Inspector Bouja inspected the subject property and observed that a second-floor, half-story accessed by a permanent staircase with a bathroom, kitchen and wall heater had been added to the garage without permits.

On April 2, 2001, Compliance Order 200105355 (see attached) was issued to the property owner instructing the owner to either demolish or legalize all unpermitted additions/alterations, including the second floor half story in the garage with kitchen and bathroom.

On April 11, 2001, Building Inspector Ted Buryn inspected the subject property and found that the second floor half story of the accessory structure had been converted to an "office" space with a kitchen and bathroom without the required permits.

On January 23, 2003, the Hearings Appeal Board found in Resolution 03-05 (see attached) that the property owner had not complied with the provisions of the Compliance Order and had failed to perform in good faith towards correction of the Municipal Code violations found on the property. Additionally, the Board found that the non-permitted building alterations on the subject property could pose a potential health and safety hazard to the occupants of the subject property and to neighboring properties because the quality of building, electrical, and other related installations could not be verified. The Board ordered that a Development Variance application for the subject non-permitted building alterations be submitted to the Planning Department.

Permit History After Code Enforcement Action

On February 12, 2003, a Development Variance (File No. V03-001) was filed for the subject property. The proposed drawings illustrated a second dwelling unit with bathroom and kitchen on the second-floor, half story of the accessory unit. On March 21, 2003, subsequent drawings were submitted that showed a toilet and a sink in separate rooms within the unpermitted second-floor, half story of the accessory structure. The application indicated that the second-floor, half story of the accessory structure is proposed for a game room or a home office and not for use as a dwelling unit.

On April 18, 2003, the Director of Planning denied the subject variance because the property did not meet the findings required to approve a Development Variance as described below.

Development Variance Provisions of Title 20

Section 20.100.1300 (1)(a) gives the Director of Planning and the Planning Commission on appeal the authority to grant Development Variances to "... the height, number of stories, frontage, setback, coverage, density, area, off-street parking, fencing, loading and landscaping requirements and regulations of this Title." Upon making the required findings, the Director or Planning Commission (on appeal) may approve a Development Variance to allow the addition of a half-story to an accessory building. Title 20 provides no authority for a Development Variance that allows an accessory building that does not meet the Zoning Code definition of such a structure [see Section 20.200.010 (A)]; consequently, the proposed Variance cannot approve the use of this structure for an office, play room or other "living space" and cannot authorize retention of existing heating or air condition systems. By definition, an accessory structure cannot contain living space or "conditioned" space (i.e., space that is heated and/or air conditioned). The Code allows approval of a Development Variance for an increase in the allowed number of stories based on specific findings; however, in this case, the facts did not support the required findings.

Actions by the Director of Planning and the Planning Commission

On April 18, 2003, the Director of Planning denied the Variance application. On April 25, 2003, the applicant appealed the decision of the Director of Planning. On June 25, 2003, the Planning Commission voted unanimously to uphold the Director's Decision to Deny the Development Variance Permit and made the following findings in denying the Permit.

1. The property *does not* exhibit special circumstances uniquely applicable to the subject property, such as size, shape, topography, location or surroundings in that the site is characteristic in size and shape with other properties in the immediate area and is generally flat and does not contain any unusual topographic features. Expressly excluded from any consideration are:
 - a. the personal circumstances of the petitioner;
 - b. or of any changes in the size or shape of the subject property made or occurring while the subject property was situate in the zoning district in which it is situate at the time of the filing of the petition, regardless of whether such changes were caused by the petitioner or his predecessors in interest, the strict application of the requirements and regulations prescribed in this Title and referred to in Subdivision A of Section 20.100.1300, deprives such property of privileges enjoyed by other property in the vicinity of an in same zoning district as the subject property, and
2. The Variance, subject to such conditions as may be imposed thereon, *will* impair:
 - a. the utility or value of adjacent property or the general welfare of the neighborhood, and;
 - b. the integrity and character of the zoning district in which the subject property is situate in that the use of 530 square feet of second floor area in an accessory structure for a home office use impairs the integrity and character of the residential zoning district. The proposed square

footage exceeds the allowed 100 square foot limitation of home occupations in accessory structures and the second floor of the accessory structure is not permitted.

3. The proposed project is **not** consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram Medium Low Density Residential (8 DU/AC) in that a finished second floor in an accessory structure with plumbing and electrical fixtures may easily be converted to a second dwelling unit which would exceed the maximum allowable density in violation of the General Plan Designation.

On July 3, 2003, the applicant filed the subject Planned Development Zoning application.

GENERAL PLAN CONFORMANCE

The proposed modification to the existing rear yard accessory structure on this single-family lot is not consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram Medium Low Density Residential (8 DU/AC) in that a finished second floor in an accessory structure with plumbing and electrical fixtures may easily be converted to a second dwelling unit which would exceed the maximum allowable density in violation of the General Plan Designation.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15303(e) of CEQA this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended in that the project consists of minor modification and conversion of an existing small structure from one use to another.

PUBLIC OUTREACH

Hearing notices were mailed to property owners within 1,000 feet of the subject property in conformance with the Public Outreach Policy. Staff has been available to discuss the project with members of the public.

ANALYSIS

Following the Planning Commission action in June 2003, to uphold the Director of Planning's denial of a development variance for this use, the remaining procedural avenue open to the applicant was to file for a Planned Development Zoning. Staff has worked with the applicant to take this project through the process, although staff has indicated the relevant facts and concerns regarding future precedent and applicability to like single-family parcels remains virtually unchanged, as described below.

Zoning Regulations

The purpose of Title 20 of the Municipal Code (the Zoning Code) is to promote and protect the public peace, health, safety and general welfare. Title 20 includes regulations for the R-1-8 Residence Zoning District in regard to both allowed uses and development standards. The R-1-8 District limits residential uses to one single-family residence per lot. Second units are prohibited. A residential accessory

building is defined by Section 20.200.010 as “a separate and subordinate building the use of which is purely incidental to that of the main building and which shall not contain living space”. Section 20.200.630 further clarifies that living space includes a room designed for living, sleeping, eating, study, home office, sewing room or recreational room. The development standards of the R-1-8 District are intended to guide and protect the character of the single-family neighborhoods to which it is applied.

Role of the Development Variance

The Zoning Code provides the Development Variance process to ensure flexibility where a parcel of land has unique characteristics that would make it unfair to apply the same development regulations applicable to other properties. Such unique characteristics may not involve the personal circumstances of the property owner or changes that the property owner has made to the property. This process is designed to treat properties in the same Zoning District equitably, but to prevent unique property characteristics from resulting in inequitable treatment. In regard to the currently proposed accessory building, both the Director of Planning and the Planning Commission determined that there were no unique property characteristics that would justify the approval of a Variance to the requirements of the R-1-8 Residence District.

Role of the A(PD) Planned Development Zoning District

The Planned Development Zoning District allows development standards and use regulations to be designed to meet the needs of a specific project on an individual property. This process is typically used where the unique standards of a custom-designed Zoning District can better implement the goals of the General Plan for that property. As an example, high-density, transit-oriented development adjacent to light rail stations is typically approved through the Planned Development Zoning process because the City has no standard zoning districts that would accommodate the type of development that the General Plan envisions for these areas.

The Planned Development Zoning District is not intended as a method to allow one property in a single-family neighborhood to enjoy privileges that are denied to hundreds of other similarly-situated properties in the same Zoning District and within the same General Plan designation. Staff receives frequent inquiries from homeowners in this neighborhood and others like it desiring to implement uses in accessory structures on single-family lots that are not allowed by the R-1 Zoning Districts. In the current case, there is no appropriate land use justification for treating this property differently from other single-family properties in the area, or in the City as a whole. The goals of the General Plan of preserving existing residential neighborhoods are not furthered by a Planned Development Zoning to approve an illegally-constructed living space that is likely to be used as second dwelling unit, contrary to the density provisions of the site's Medium Low Density Residential (8DU/AC) General Plan designation. Allowing this property (with its illegally implemented structure and use) to enjoy unique benefits, but denying those same benefits to similar properties would be an inappropriate use of the Planned Development Zoning process.

Impairment of Adjacent Properties or the General Welfare of the Neighborhood

The limitations on the use and design of accessory structures on single-family lots are intended to ensure that these structures are clearly secondary to the residence and that they do not become an additional, separate use in the rear yard of a single-family property. The subject 530 square-foot, second-floor, one and one half story accessory structure with a permanent staircase and finished interior, creates a separate

living space that has the potential to facilitate a variety of future uses and use violations which could result in impacts on surrounding properties. Use of the accessory building for a business or a living unit, could result in overflow parking and generally increase the amount of traffic and activity proximate to the rear yards of surrounding residences.

Possible Amendment to Title 20

Based on the above analysis, staff does not believe that the proposed accessory building and half-story living space are suitable for this site; however, if the proposal were determined to be suitable for this site, it would necessarily also be suitable for other similarly situated properties citywide throughout the R-1-8 Residence District. The more appropriate method for the City to allow living space and second floors in accessory structures on single-family properties would be to consider an amendment to Title 20, the Zoning Code, to change the development standards of the R-1-8 District and other R-1 Residence Districts so that these benefits would be made available equitably to similarly situated properties. Such a Code change would ultimately be decided by the City Council

Revised Plans

The plans submitted for this proposed rezoning are internally inconsistent, proposing the accessory building living area as a single-family detached residence on one sheet and an office on the other. Should the City Council choose to approve this proposed rezoning, the project will need to be referred back to staff so that the plans can be corrected and appropriate development standards can be drafted for the proposal.

Conclusion

Based on the above analysis, staff concludes that there is no basis to support the rezoning of the property to A(PD) Planned Development to allow living space on the second floor of a half-story in an accessory structure and that such approval would be detrimental to surrounding properties and to the integrity of Title 20.

RECOMMENDATION

Planning staff recommends that the Planning Commission forward a recommendation to the City Council to deny the subject rezoning for the following reasons:

1. The project does not conform to the General Plan Land Use designation.
2. The project has the potential to be incompatible with adjacent properties.
3. The project would allow a single property to enjoy benefits not available to other similarly-situated single-family properties in the same neighborhood and throughout the City.